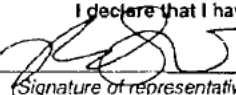
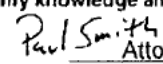


UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST EMPLOYER		DO NOT WRITE IN THIS SPACE Case Date Filed 10-CA-139670 10-27-14	
INSTRUCTIONS: File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.			
1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT			
a. Name of Employer James Booth-JKS & K, Inc. d/b/a McDonald's & McDonald's Corp., as Joint and Single Employers		b. Number of workers employed 100	
c. Address James Booth-JKS & K Inc. 8584 Rivers Ave., Suite 103 North Charleston, SC 29406 McDonald's Corp. 2111 McDonald's Dr. Oak Brook, IL 60523	d. Employer Representative <div style="background-color: black; color: white; padding: 2px;">(b) (6), (b) (7)(C)</div> McDonald's: Gloria Santona	e. Telephone No. (843) 744-0626	
f. Type of Establishment Restaurant	g. Identify principal product or service Food Service		
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsection s(1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.			
2. BASIS OF THE CHARGE <i>(Set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)</i> On May 2, 2014, the above named employer unlawfully interfered with, restrained, and coerced employees in the exercise of their rights under the Act by engaging in unlawful surveillance and creating the impression of surveillance. In particular, circulating pictures of union organizers to employees.			
3. Full name of party filing charge <i>(if labor organization, give full name, including local name and number)</i> Southern Workers Organizing Committee			
4a. Address <i>(street and number, city, state, and ZIP code)</i> 314 S. Wilmington St., Suite 207 Raleigh, NC 27601		4b. Telephone No. Emily Ricards (989) 513-8488	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit <i>(to be filled in when charge is filed by a labor organization)</i>			
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.			
 <i>(Signature of representative or person making charge)</i>		 Paul Smith Attorney <i>(Title if any)</i>	
Address <u>Patterson Harkavy LLP 100 Europa Drive, Suite 250 Chapel Hill, NC 27517</u>		(919) 942-5200 <i>(Telephone No.)</i>	
(Date) <u>10/27/2014</u>			
WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)			



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 10
233 Peachtree St NE
Harris Tower Ste 1000
Atlanta, GA 30303-1504

Agency Website: www.nlr.gov
Telephone: (404)331-2896
Fax: (404)331-2858



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October 28, 2014

Gloria Santona, Counsel
McDonald's Corp
2111 McDonald's Drive
Oak Brook, IL 60523

(b) (6), (b) (7)(C)

James Booth-JKS & K, Inc. d/b/a McDonald's & McDonald's Corp., as Joint and Single Employers
8584 Rivers Ave
Suite 103
North Charleston, SC 29406

Re: James Booth-JKS & K, Inc.d/b/a
McDonald's Corp., as Joint and Single
Employers
Case 10-CA-139670

Dear Ms. Santona, (b) (6), (b) (7)(C) :

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney JEFFREY D. WILLIAMS whose telephone number is (404)331-2899. If this Board agent is not available, you may contact Supervisory Field Attorney LISA HENDERSON whose telephone number is (404)331-2889.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

October 28, 2014

Very truly yours,

A handwritten signature in black ink that reads "Claude T Harrell Jr". The signature is written in a cursive, slightly slanted style.

CLAUDE T. HARRELL JR.
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

cc: Andrew G. Madsen, Attorney
Jones Day
77 W. Wacker Drive, Suite 3500
Chicago, IL 60601-1701

JONATHAN M LINAS, Attorney
Jones Day
77 W WACKER DR., Ste. 3500
CHICAGO, IL 60601-1692

Doreen S. Davis, Attorney
Jones Day
222 East 41st Street
New York, NY 10017-6702

STEPHEN C. MITCHELL, ESQ.
Fisher & Phillips, LLP
1320 Main St Ste 750
Columbia, SC 29201-3284

Matthew Korn, Esquire
Fisher & Phillips LLP
Post Office Box 11612
Columbia, SC 29211

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

James Booth-JKS & K, Inc.d/b/a McDonald's Corp., as Joint and Single Employers

CASE NUMBER

10-CA-139670

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)**2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)**3. IF A CORPORATION or LLC**

A. STATE OF INCORPORATION OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS**5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates)A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$**YES NO**B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$**H. Gross Revenues from all sales or performance of services (Check the largest amount)**☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.

I. Did you begin operations within the last 12 months? If yes, specify date: _____

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may

cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**JAMES BOOTH-JKS & K, INC.D/B/A
MCDONALD'S CORP., AS JOINT AND SINGLE
EMPLOYERS**

Charged Party

and

**SOUTHERN WORKERS ORGANIZING
COMMITTEE**

Charging Party

Case 10-CA-139670

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on October 28, 2014, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Gloria Santona, Counsel
McDonald's Corp
2111 McDonald's Drive
Oak Brook, IL 60523

Andrew G. Madsen, ESQ., Attorney
Jones Day
77 W. Wacker Drive, Suite 3500
Chicago, IL 60601-1701

JONATHAN M LINAS, ESQ., Attorney
Jones Day
77 W WACKER DR., Ste. 3500
CHICAGO, IL 60601-1692

Doreen S. Davis, Attorney
Jones Day
222 East 41st Street
New York, NY 10017-6702

(b) (6), (b)
(7)(C)

James Booth-JKS & K, Inc. d/b/a McDonald's
& McDonald's Corp., as Joint and Single
Employers
8584 Rivers Ave
Suite 103
North Charleston, SC 29406

STEPHEN C. MITCHELL, ESQ.
Fisher & Phillips, LLP
1320 Main St Ste 750
Columbia, SC 29201-3284

Matthew Korn, Esquire
Fisher & Phillips LLP
Post Office Box 11612
Columbia, SC 29211

October 28, 2014

Date

Designated Agent of NLRB

Name

/s/ Paul E. Dorsey

Signature



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 10
233 Peachtree St NE
Harris Tower Ste 1000
Atlanta, GA 30303-1504

Agency Website: www.nlrb.gov
Telephone: (404)331-2896
Fax: (404)331-2858



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October 28, 2014

Emily Ricards
Southern Workers Organizing Committee
324 South Wilmington Street, Suite 207
Raleigh, NC 27601

Re: James Booth-JKS & K, Inc.d/b/a
McDonald's Corp., as Joint and Single
Employers
Case 10-CA-139670

Dear Ms. Ricards:

The charge that you filed in this case on October 27, 2014 has been docketed as case number 10-CA-139670. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney JEFFREY D. WILLIAMS whose telephone number is (404)331-2899. If this Board agent is not available, you may contact Supervisory Field Attorney LISA HENDERSON whose telephone number is (404)331-2889.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or at the Regional office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you

fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website www.nlr.gov or from the Regional Office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink that reads "Claude T Harrell Jr". The signature is written in a cursive, slightly slanted style.

CLAUDE T. HARRELL JR.
Regional Director

cc: Paul Smith, ESQ.
Patterson Harkavy LLP
100 Europa Drive
Suite 250
Chapel Hill, NC 27517

From: [Lauren Bonds](#)
To: [Williams, Jeffrey D.](#)
Subject: Re: (b) Termination Charge
Date: Tuesday, November 4, 2014 10:41:36 AM
Attachments: [Security Photo -1.pdf](#)
[Security Photo-Text-2.pdf](#)

Yes. I believe you should have everything you need. To confirm you have everything I attached the evidence and direct you to (b) (6), (b) (7)(C), (b) (7)(D)

On Tue, Nov 4, 2014 at 10:34 AM, Williams, Jeffrey D. <Jeffrey.Williams@nlrb.gov> wrote:

Ok, so I have all of your evidence and can go ahead and request the Employer's evidence?

From: Lauren Bonds [mailto:lauren.bonds@seiu.org]
Sent: Tuesday, November 04, 2014 10:33 AM
To: Williams, Jeffrey D.
Subject: Re: (b) (6), Termination Charge

(b) (6), (b) (7)(C), (b) (7)(D) on the issue in (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C) and we provided you with photographic evidence of the unlawful surveillance in "Exhibit 1" of our position statement and 10(j) request submitted on July 25, 2014.

On Tue, Nov 4, 2014 at 10:27 AM, Williams, Jeffrey D. <Jeffrey.Williams@nlrb.gov> wrote:

Who is your witness(es) for this new charge in 10-CA-139670?

From: Lauren Bonds [mailto:lauren.bonds@seiu.org]
Sent: Monday, November 03, 2014 3:43 PM
To: Williams, Jeffrey D.
Subject: (b) (6), Termination Charge

Hi Jeff,

I hope you are well. When is the position statement for this case due? Also any word on (b) (6), (b) (7)(C) uniform, button, and jewelry case?

Thanks

Lauren

--

Lauren Bonds

Law Fellow

Service Employees International Union

--

Lauren Bonds

Law Fellow

Service Employees International Union

--

Lauren Bonds

Law Fellow

Service Employees International Union

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Huh? Signs up for what

(b) (6), (b) (7)(C)

Sent (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

This (b) (6), (b) (7)(C) cannot be on the property
soliciting

(b) (6), (b) (7)(C)



(b) (6), (b) (7)(C)

OK but signs up for what?

Sent (b) (6), (b) (7)(C)

To picket for 15an hr



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 10
233 Peachtree St NE
Harris Tower Ste 1000
Atlanta, GA 30303-1504

Agency Website: www.nlrb.gov
Telephone: (404)331-2896
Fax: (404)331-2858

Agent's Direct Dial: (404)331-2899

November 5, 2014

Andrew G. Madsen, ESQ.
Jones Day
77 W. Wacker Drive, Suite 3500
Chicago, IL 60601-1701

JONATHAN M LINAS, ESQ., Attorney
Jones Day
77 W WACKER DR., Ste. 3500
CHICAGO, IL 60601-1692

Doreen S. Davis, Attorney
Jones Day
222 East 41st Street
New York, NY 10017-6702

STEPHEN C. MITCHELL, ESQ.
Fisher & Phillips, LLP
1320 Main St Ste 750
Columbia, SC 29201-3284

Matthew Korn, Esquire
Fisher & Phillips LLP
Post Office Box 11612
Columbia, SC 29211

Re: James Booth-JKS & K, Inc. d/b/a
McDonald's Corp., as Joint and Single
Employers
Case 10-CA-139670

Dear Mr. Madsen, Mr. LINAS, Ms. Davis, Mr. MITCHELL, Mr. Korn:

I am writing this letter to advise you that it is now necessary for me to take evidence from your client regarding the allegations raised in the investigation of the above-captioned matter. As explained below, I am requesting to take affidavits on or before November 19, 2014, with regard to certain allegations in this case.

Allegations: The allegations for which I am seeking your evidence are as follows. It is alleged that on about (b) (6), 2014, (b) (6), (b) (7)(C) at your 5950 Rivers Avenue

store in North Charleston, SC, referred to as the Mid-Rivers store, sent a text to (b) (6), (b) (7)(C) managers with a picture of (b) (6), (b) (7)(C) inside the store. It is alleged that this text included instructions that this (b) (6), (b) (7)(C) could not be inside the store soliciting. The text went on to explain that the (b) (6), (b) (7)(C) was soliciting for \$15 an hour for employees. It is alleged that the managers were instructed that if they saw this (b) (6), (b) (7)(C) inside the store, they were to have (b) (6), (b) (7)(C) leave the store or call (b) (6), (b) (7)(C).

It is alleged that at a mandatory managers' meeting in about May 2014, (b) (6), (b) (7)(C) instructed (b) (6), (b) (7)(C) managers to look out for union organizers and to call (b) (6), (b) (7)(C) if they see a union organizer at the store. It is further alleged that at this same meeting, (b) (6), (b) (7)(C) instructed the managers that if they did see an organizer at the store, they were to inform (b) (6), (b) (7)(C) of the time and date so that (b) (6), (b) (7)(C) could check the security video to see who the organizer was and who the organizer was talking to. It is alleged that (b) (6), (b) (7)(C) also instructed the managers at this meeting to inform (b) (6), (b) (7)(C) of any employees they see talking to a union organizer at the store. It is alleged that (b) (6), (b) (7)(C) was present at this meeting as well.

Board Affidavits: I am requesting to take affidavits from (b) (6), (b) (7)(C) and any other individuals you believe have information relevant to the investigation of the above-captioned matter. Please be advised that the failure to present representatives who would appear to have information relevant to the investigation of this matter, for the purposes of my taking sworn statements from them, constitutes less than complete cooperation in the investigation of the charge. Please contact me ASAP to schedule these affidavits.

Documents: Please provide any and all other evidence you deem to be relevant to the case:

Date for Submitting Evidence: To resolve this matter as expeditiously as possible, you must provide your evidence and position in this matter by November 19, 2014. If you are willing to allow me to take affidavits, please contact me ASAP to schedule a time to take affidavits. Electronic filing of position statements and documentary evidence through the Agency website is preferred but not required. To file electronically, go to www.nlr.gov, select **E-File Documents**, enter the **NLRB case number**, and follow the detailed instructions. If I have not received all your evidence by the due date or spoken with you and agreed to another date, it will be necessary for me to make my recommendations based upon the information available to me at that time.

Please contact me at your earliest convenience by telephone, (404)331-2899, or e-mail,

James Booth-JKS & K, Inc. d/b/a
McDonald's Corp., as Joint and Single
Employers
Case 10-CA-139670

- 3 -

November 5, 2014

jeffrey.williams@nlrb.gov, so that we can discuss how you would like to provide evidence and I can answer any questions you have with regard to the issues in this matter.

Very truly yours,

JEFFREY D. WILLIAMS
Field Attorney

From: [Williams, Jeffrey D.](#)
To: (b) (6), (b) (7)(C); nghosh@pathlaw.com
Subject: McDonalds 10-CA-139670
Date: Wednesday, February 18, 2015 3:41:40 PM
Attachments: [AFF.10-CA-139670.Telephone Affidavit \(b\) \(6\), \(b\) \(7\)\(C\), \(b\) \(7\)\(D\).docx](#)

Attached is the unsigned telephone affidavit I took from (b) (6), (b) (7)(C), (b) (7)(D) on (b) (6), (b) (7)(C), (b) (7)(D). Please review it, and if it is correct, sign, date and return it to me so I receive it by this Friday, February 20, 2015. Thanks.

Jeffrey D. Williams
Field Attorney
NLRB Region 10
233 Peachtree Street NE
Harris Tower, Suite 1000
Atlanta, GA 30303
404-331-2899



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 10
233 Peachtree St NE
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Atlanta, GA 30303-1504

Agency Website: www.nlrb.gov
Telephone: (404)331-2896
Fax: (404)331-2858

Agent's Direct Dial: (404)331-2899

February 18, 2015

(b) (6), (b) (7)(C)

Re: James Booth-JKS & K, Inc. d/b/a
McDonald's Corp., as Joint and Single
Employers
Case 10-CA-139670

Dear (b) (6), (b) (7)(C)

Enclosed is the affidavit I prepared based on our conversation on (b) (6), (b) (7)(C), (b) (7)(D). As we discussed, the affidavit will be considered a confidential law enforcement record by the Board and will not be disclosed unless it becomes necessary to produce the affidavit in connection with a formal proceeding. Please do not show this affidavit to anyone other than your attorney or representative in this matter.

You should read the affidavit very carefully to make sure everything is correct. If you find anything that is not fully accurate, make the appropriate changes and then place your initials next to anything you cross out or add. If something relevant is omitted from the affidavit, you may add that but call me so we can discuss the addition and make sure all the necessary information is included. If you add something, place your initials next to that addition.

After you have read the affidavit, you should place your initials at the bottom of each page to indicate that you have read it and then sign and date the last page of the affidavit. When you have initialed and signed the affidavit, please return it to me so that I receive it on or before February 20, 2015.

If you have any questions or remember anything else that is important, please immediately let me know. Thank you for your assistance in this matter.

Very truly yours,

JEFFREY D. WILLIAMS
Field Attorney

Burton Craige
I arendra K. Ghosh
Jonathan R. Harkavy
Michael G. Okun
Henry J. Patterson, Jr.
Paul E. Smith

Patterson | Harkavy LLP

I AREI DRA K. GHOSH
nghosh@pathlaw.com

ATTORNEYS AT LAW

Raleigh □ Chapel Hill □ Greensboro

February 23, 2015

Of Counsel:
I ahomi Harkavy

Via Email

Jeffery Williams

National Labor Relations Board, Region 10

223 Peachtree Street N.E.,

Harris Tower, Suite 1000

Atlanta, GA 30303

Jeffery.Williams@nrlrb.gov

**RE: JSK & K Inc. d/b/a McDonald's & McDonald's Corp. as Joint Employers
Case 10-CA-139670**

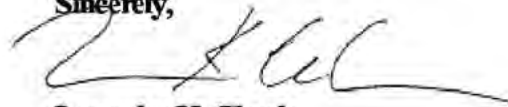
Dear Mr. Williams:

Please accept this letter as a statement of the Union's position in the above matter. The essence of the charge is that Employer created an impression of surveillance by showing security camera footage of (b) (6), (b) (7)(C) to employee (b) (6), (b) (7)(C).

The Union confirms that the person shown on the security camera footage was (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) for (b) (6), (b) (7)(C) worked for (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C).

Thank you for your attention to this matter.

Sincerely,



I arendra K. Ghosh

From: [Narendra K. Ghosh](#)
To: [Williams, Jeffrey D.](#)
Subject: RE: McDonalds 10-CA-139670
Date: Monday, February 23, 2015 11:28:32 AM
Attachments: [10-CA-139670 Position Statement.pdf](#)

Mr. Williams,

Attached is short position statement from the Union regarding the security camera footage.

Please let me know if you need anything else.

Regards,

Narendra K. Ghosh
Patterson Harkavy LLP
100 Europa Dr., Ste. 420
Chapel Hill, NC 27517
(919) 942-5200
(866) 397-8671 fax
www.pathlaw.com

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From: Williams, Jeffrey D. [mailto:Jeffrey.Williams@nrlb.gov]
Sent: Wednesday, February 18, 2015 3:40 PM
To: (b) (6), (b) (7)(C) Narendra K. Ghosh
Subject: McDonalds 10-CA-139670

Attached is the unsigned telephone affidavit I took from (b) (6), (b) (7)(C), (b) (7)(D) on (b) (6), (b) (7)(C), (b) (7)(D). Please review it, and if it is correct, sign, date and return it to me so I receive it by this Friday, February 20, 2015. Thanks.

Jeffrey D. Williams
Field Attorney
NLRB Region 10
233 Peachtree Street NE
Harris Tower, Suite 1000
Atlanta, GA 30303
404-331-2899

Burton Craige
Narendra K. Ghosh
Jonathan R. Harkavy
Michael G. Okun
Henry N. Patterson, Jr.
Paul E. Smith

Of Counsel
Nahomi Harkavy

Patterson | Harkavy LLP

NARENDRA K. GHOSH

nghosh@pathlaw.com

ATTORNEYS AT LAW

Raleigh • Chapel Hill • Greensboro

February 23, 2015

Via Email

Jeffery Williams
National Labor Relations Board, Region 10
223 Peachtree Street N.E.,
Harris Tower, Suite 1000
Atlanta, GA 30303
Jeffery.Williams@nrlrb.gov

RE: JSK & K Inc. d/b/a McDonald's & McDonald's Corp. as Joint Employers
Case 10-CA-139670

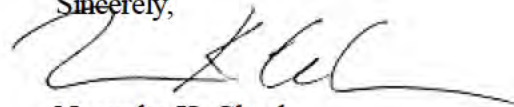
Dear Mr. Williams:

Please accept this letter as a statement of the Union's position in the above matter. The essence of the charge is that Employer created an impression of surveillance by showing security camera footage of (b) (6), (b) (7)(C) to employee (b) (6), (b) (7)(C).

The Union confirms that the person shown on the security camera footage was (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) for (b) (6), (b) (7)(C) worked for (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C).

Thank you for your attention to this matter.

Sincerely,



Narendra K. Ghosh

From: [Hymon, Gaye N.](#)
To: [Williams, Jeffrey D.](#)
Cc: [Harrell, Claude L.](#); [Bulls, Mary L.](#)
Subject: FW: FIR.10-CA-139670.McDonalds
Date: Wednesday, July 1, 2015 3:57:41 PM
Attachments: [FIR.10-CA-139670.McDonald s.docx](#)

FYI

From: Dunham, Geoffrey
Sent: Wednesday, July 01, 2015 3:55 PM
To: Hymon, Gaye N.
Subject: FW: FIR.10-CA-139670.McDonalds

OK to process (b) (5), (b) (6), (b) (7)(C)

[REDACTED]

From: Hymon, Gaye N.
Sent: Tuesday, June 30, 2015 3:42 PM
To: Dunham, Geoffrey
Subject: FIR.10-CA-139670.McDonalds

Attached, please find the Region's (b) (5) [REDACTED] in the above case. Any questions or concerns, please do not hesitate to let us know.

Thank you!!



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 10
233 Peachtree St NE
Harris Tower Ste 1000
Atlanta, GA 30303-1504

Agency Website: www.nlrb.gov
Telephone: (404)331-2896
Fax: (404)331-2858

July 7, 2015

Paul Smith, Attorney
Southern Workers Organizing Committee
100 Europa Drive, Suite 250
Chapel Hill, NC 27517

Re: James Booth-JKS & K, Inc.,
d/b/a McDonald's Corp.,
(as Joint and Single Employers)
Case 10-CA-139670

Dear Mr. Smith:

We have carefully investigated and considered your charge that James Booth-JKS & K Inc., d/b/a McDonald's & McDonald's Corp. has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge for the reasons discussed below.

Your charge alleges that the Employer engaged in unlawful surveillance and created the impression of surveillance by circulating a picture of (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) and instructing (b) (6), (b) (7)(C) to observe (b) (6), (b) (7)(C) activities on the Employer's property. The investigation revealed that (b) (6), (b) (7)(C) are authorized to independently issue written warnings to employees, can effectively recommend suspensions and discharges, are in charge of a store when a (b) (6), (b) (7)(C) is not present, are expected to attend management meetings, and have access to the store safe. The investigation further revealed that (b) (6), (b) (7)(C) was entrusted to (b) (6), (b) (7)(C). Based thereon, there is sufficient evidence to establish that (b) (6), (b) (7)(C) was a statutory supervisor. Therefore, further proceedings on this charge are not warranted.¹

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY

¹ A supplemental telephone affidavit was taken from (b) (6), (b) (7)(C), (b) (7)(C) in this case. However, despite several requests by the Board agent for the return of the executed affidavit, (b) (6), (b) (7)(C), (b) (7)(C) failed to do so.

July 8, 2015

NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlr.gov, click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **July 22, 2015**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than July 21, 2015. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before July 22, 2015**. The request may be filed electronically through the **E-File Documents** link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after July 22, 2015, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,



CLAUDE T. HARRELL JR.
Regional Director

Enclosure

James Booth-JKS & K, Inc.,
d/b/a McDonald's Corp.,
(as Joint and Single Employers)
Case 10-CA-139670

- 3 -

July 8, 2015

cc: Gloria Santona, Attorney
McDonald's Corp
2111 McDonald's Drive
Oak Brook, IL 60523

Andrew G. Madsen, Attorney
Jonathan M. Linas, Attorney
Jones Day
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Doreen S. Davis, Attorney
Jones Day
222 East 41st Street
New York, NY 10017-6702

(b) (6), (b) (7)(C)

James Booth-JKS & K, Inc. d/b/a McDonald's &
McDonald's Corp., as Joint and Single Employers
8584 Rivers Ave, Suite 103
North Charleston, SC 29406

Stephen C. Mitchell, Attorney
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Fisher & Phillips, LLP
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Columbia, SC 29201-3284

Emily Ricards, Representative
Southern Workers Organizing Committee
324 South Wilmington Street, Suite 207
Raleigh, NC 27601

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
Room 8820, 1099 - 14th Street, N.W.
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Case Name(s).

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SOUTHERN WORKERS)	
ORGANIZING COMMITTEE)	
)	
and)	Case No.
)	
JKS&K Inc. D/B/A MCDONALDØS)	10-CA-139670
and MCDONALDØS CORP.)	

**CHARGING PARTY’S APPEAL FROM REGIONAL DIRECTOR’S
REFUSAL TO ISSUE COMPLAINT**

Introduction

Charging Party, Southern Workers Organizing Committee (õSWOCö or õUnionö), respectfully appeals from Region 10Øs decision to dismiss the above-captioned charge. Case 10-CA-139670 alleges that JKS & K Inc. & McDonaldØs (õEmployerö) engaged in unlawful surveillance by reviewing security camera footage to spy on union activity and created an impression of surveillance by showing pictures of union activity to (b) (6), (b) (7)(C) and instructing (b) (6), (b) (7)(C) to report employees that spoke to the organizer. The Region dismissed the charge, finding that (b) (6), (b) (7)(C) were supervisors under Section 2(11) of the Act and therefore ineligible for Section 7 protections. The Region cited only one of Section 2(11)Øs supervisory functions when reaching this conclusion ó (b) (6), (b) (7)(C) purported ability to (b) (6), (b) (7)(C) along with (b) (6), (b) (7)(C) additional findings. The Region made no determination on the merits of the surveillance charge.

The Union appeals this case because the Region failed to properly analyze (b) (6), (b) (7)(C) authority under Section 2(11). Although (b) (6), (b) (7)(C) did at times document (b) (6), (b) (7)(C) had no significant responsibilities requiring independent judgment, and lacked the ability to assign or responsibly direct crew members. Consequently, the Union requests that Region 10Øs decision to dismiss the charge be reversed, that the charge be remanded, and that complaint be issued absent appropriate settlement.

Procedural History

The Union filed charge 10-CA-139670 on October 30, 2014. Region 10 announced the dismissal of case on July 7, 2015.

Issues Presented

This case presents two questions: (1) whether (b) (6), (b) (7)(C) is a "supervisor" under the Act, and (2) whether Employer engaged in surveillance and created an impression of surveillance by using the store security camera to spy on union activity. The first question is of paramount importance. In the Union's experience, many fast food employers label a large portion of their employees "supervisors" or "managers." These employees carry a wide variety of labels "e.g. (b) (6), (b) (7)(C)" but consistently exercise almost no real authority in the workplace. They are typically just as subject to their employers' abusive policies as other employees, receiving poverty wages, no benefits, and little control over their highly variable schedules.¹

Moreover, these employees typically have more experience on the job, so better understand that their employer will not improve their working conditions voluntarily. (b) (6), (b) (7)(C) along with similarly positioned employees with other employers, have therefore become active and engaged members of the Union's organizing efforts.² If employers are permitted to remove large segments of their employees from the Act's protections merely by labeling them a (b) (6), (b) (7)(C) and ascribing to them a minimal level of extra authority, then a significant portion of the fast food industry's most exploited workers will be deprived of the Act's protections. (b) (6), (b) (7)(C) across McDonald's system typically possess similar levels of authority to (b) (6), (b) (7)(C). Consequently a determination of (b) (6), (b) (7)(C) supervisory status would provide much needed guidance as to whether low level supervisors are entitled to the protection of the Act.

Facts

1. In Employer's Management Structure, (b) (6), (b) (7)(C) Have No Meaningful Managerial Authority.

Employer owns and operates approximately fifteen restaurants in the Charleston area, including the "Mid-Rivers" store in North Charleston, South Carolina.³ Employer's stores are generally staffed by a store manager, an assistant manager, as many as eight shift managers, and crew members.⁴ The number of managers and crew members per shift is determined by customer

¹ Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) (d (b) (6), (b) (7)(C), (b) (7)(D) Aff.ö) ¶13

² *Id.* at ¶¶11-12.

³ Located at 5905 Rivers Avenue North Charleston, South Carolina.

⁴ Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) (d Second (b) (6), (b) (7)(C), (b) (7)(D) Aff.ö) ¶3.

volume. Crew members are trained to work one or more defined positions: front counter, runner, drive thru, first window, grill, or food preparation.⁵

A. Store Managers

Each of Employer's stores has one store manager. The store manager interviews and hires new employees, and directs that they be trained for one or more defined positions within the store. The store manager determines when an employee's misconduct warrants discipline, when an employee's good performance warrants a pay raise, and when an employee needs to be terminated.⁶

The store manager, often with the assistance of the assistant manager, is responsible for issuing a store's weekly schedules.⁷ Making the schedule requires not only assigning workers to a shift, but also designating the position each crew member will work during that shift. The schedule includes small letters next to each crew member's name to indicate their job for each day.⁸ For example, crew members working front counter will have "w" by their name, runners have "r", and those working drive thru will have "d."⁹ By producing work schedules, the store manager controls when employees will work, where they will be positioned, and what tasks they will perform.

Only store managers can excuse an employee's absence or send an employee home early from a scheduled shift.¹⁰ When a store manager is not physically present at a location, they are accessible by telephone.¹¹ The store manager's control of each store's schedule extends to the cleaning schedule. Store managers designate certain times during a shift as "shop time," when employees are to clear their work areas.¹² Store managers also inform workers when less routine cleaning tasks need to be performed.¹³ The Mid-Rivers store is managed by (b) (6), (b) (7)(C). Store managers are concededly supervisors under the Act.

⁵ Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) ("Second (b) (6), (b) (7)(C) Aff.") ¶6.

⁶ Second (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶5.

⁷ Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) ("Third (b) (6), (b) (7)(C), (b) (7)(D) Aff.") ¶5; Second (b) (6), (b) (7)(C) Aff. ¶4; Second (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶5.

⁸ Exhibit 6: Sample Schedule. This schedule was provided to (b) (6), (b) (7)(C) during (b) (6), (b) (7)(C), training, and was described as consistent with the schedules used at employer's stores.

⁹ Third (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶4; Exhibit 6.

¹⁰ Second (b) (6), (b) (7)(C) Aff. ¶¶4, 24-25; Second (b) (6), (b) (7)(C), (b) (7)(D) Aff. 5, 30.

¹¹ Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) ("First (b) (6), (b) (7)(C), (b) (7)(D) Aff.") at p.2; Second (b) (6), (b) (7)(C) Aff. ¶¶23-25.

¹² Third (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶¶ 11-12.

¹³ Second (b) (6), (b) (7)(C) Aff. ¶26.

B. Assistant Managers

Employer typically employs one assistant manager per store. When an assistant manager position is vacant, store managers appear to select one of the store's shift managers to temporarily assume their duties.¹⁴ Assistant managers generally assist in making weekly schedules, conduct inventory counts, and fill in for the store managers when they are on vacation.¹⁵ Some assistant managers assisted with hiring decisions.¹⁶ (b) (6), (b) (7)(C) worked as the assistant manager at the Mid-Rivers store for most of (b) (6), (b) (7)(C) tenure until (b) (6), (b) (7)(C) transferred in or around (b) (6), (b) (7)(C) 2014.¹⁷ (b) (6), (b) (7)(C) was informally replaced by (b) (6), (b) (7)(C).¹⁸

C. Shift Managers

Finally, each of the three stores labels as many as eight employees "shift managers." Shift managers sometimes earn less than crew members, and do not receive raises when "promoted" to shift manager.¹⁹ They work variable schedules that are set by the store manager.²⁰ While shift managers' job responsibilities are largely identical to those of regular crew members, they also perform a few additional administrative tasks: completing a shift checklist at the beginning of a shift, completing a position chart, documenting employee misconduct, and inputting drawers at the end of a shift.²¹

At the beginning of each shift, shift managers complete a "shift checklist" and "position chart." Completing a shift checklist requires confirming that all supplies were stocked and all machinery was prepared for the shift.²² When completing a position chart, the store manager would already have determined which position each employee would work that shift.²³ Shift managers would simply "slot" individual workers to specific tasks within that area of

¹⁴ Second (b) (6), (b) (7)(C) Aff. ¶4.

¹⁵ *Id.*; Second (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶5.

¹⁶ Second (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶4.

¹⁷ Second (b) (6), (b) (7)(C) Aff. ¶3.

¹⁸ *Id.*

¹⁹ Second (b) (6), (b) (7)(C) Aff. ¶5; Second (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶8; Third (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶6.

²⁰ First (b) (6), (b) (7)(C), (b) (7)(D) Aff. At p.2.

²¹ Certain shift managers may have been afforded additional responsibilities by their store managers. For example, (b) (6), (b) (7)(C) testified that (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) ("Second (b) (6), (b) (7)(C) Aff.") at p. 3. And as noted above, a shift manager could assume the assistant manager's responsibilities when that position was vacant. Second (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶4. There is no evidence that (b) (6), (b) (7)(C), (b) (7)(D) was given such additional responsibilities.

²² Second (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶11; Exhibit 7: Training Manual, at pp.10-11.

²³ Second (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶12; Second (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶6.

assignment.²⁴ For example, three employees would typically be assigned to work the front counter. These employees were responsible for two tasks: bagging food and working the cash register.²⁵ A shift manager would simply divide the two tasks between these three workers.²⁶

During a shift, shift managers' duties were nearly identical to regular crew members.²⁷ Depending on work flow, they might help workers in areas that were backed up.²⁸ Shift managers also occasionally documented employee misconduct by inputting a code into the store computer, and completing write-up forms through the store's in-store processor ("ISP").²⁹ The write-up form consists of several boxes corresponding with the type of violation that occurred, a space where the shift manager can provide a brief description of the incident, and signature spaces for the crew member, shift manager, and store manager.³⁰ The form only permits the shift manager to select a type of misconduct from a given list; there is no "other" category permitting shift managers to describe other types of incidents they felt constituted a rule violation.³¹ Once the shift manager fills out the form, they print it and present it to the crew member to sign.³²

After the crew member signs the write-up, the shift manager will sign the write-up and place it in the store office.³³ Shift manager write-ups do not constitute discipline in and of themselves. Nothing happens when an employee is written up by a shift manager unless the store manager reviews the write up and independently determines that some action is appropriate.³⁴ Write-ups frequently do not result in any disciplinary action.³⁵ Shift manager write-ups do not automatically play a role in the Employer's progressive disciplinary system. Instead, Employer's "Disciplinary Action Policy" provides the store manager with discretion as to whether documented verbal warnings will be stored in the employee's personnel folder.³⁶ Store managers often elect not to place such write-ups in employees' personnel folder.³⁶

²⁴ Second [REDACTED] Aff. ¶¶12-13; Second [REDACTED] Aff. ¶6.

²⁵ Second [REDACTED] Aff. ¶13.

²⁶ [REDACTED]

²⁷ *Id.* ¶15; Second [REDACTED] Aff. ¶8.

²⁸ Second Dowling Aff. ¶15

²⁹ Second [REDACTED] Aff. ¶14; Affidavit of [REDACTED] (b) (6), (b) (7)(C), (b) (7)(D) ("Second [REDACTED] Aff.")

¶7; Affidavit of [REDACTED] (b) (6), (b) (7)(C), (b) (7)(D) ("[REDACTED] Aff.") ¶7.

³⁰ Second [REDACTED] Aff. ¶¶15, 19; Second [REDACTED] Aff. ¶7; [REDACTED] Aff. ¶10.

³¹ Second [REDACTED] Aff. ¶¶15-16; Second [REDACTED] Aff. ¶7.

³² Second [REDACTED] Aff. ¶ 14.

³³ *Id.* ¶20

³⁴ Second [REDACTED] Aff. ¶ 13; [REDACTED] Aff. ¶7

³⁵ Exhibit 1: Crew member Handbook, p.5 (establishing that documented verbal warning "may be included in the employees file" (emphasis added)).

³⁶ Second [REDACTED] Aff. ¶13; [REDACTED] Aff. ¶11.

Shift manager write-ups do not recommend discipline. There is no space on the write-up form where shift managers can recommend that an employee be disciplined for an incident, suggest what type of discipline would be appropriate, or describe steps for improvement.³⁷ Store managers instead conduct their own independent investigation when they think that discipline may be appropriate for a given rule violation, and use their own independent judgment when deciding the course of action to take.³⁸ Even when shift managers independently choose to recommend discipline, store managers often disregard their suggestions.³⁹ At the end of a shift, shift managers count the quantity of money in the cash register, place the money in the safe, enter the amount of cash collected into the computer, and enter the amount of wasted food into the computer.⁴⁰

As recognized by the Region, at some of the restaurants at issue there were times when neither the store manager nor the assistant manager was present. When this occurred, there was normally more than one shift manager on duty.⁴¹ Shift managers did not have any more authority during these shifts.⁴² Employees' schedules and job assignments were always assigned by the store manager in advance. Shift managers were still not authorized to make decisions that impacted Employer's relationship with other employees. If something unexpected occurred, the shift managers were supposed to call the store manager for instructions.⁴³ If a worker could not come to his or her shift, either the worker had to call the store manager, or the shift manager had to call the store manager.⁴⁴ Shift managers could not excuse absences, and could not send workers home early unless instructed to do so by the store manager.⁴⁵

Before becoming a shift manager, employees complete a three-day training event held by McDonald's corporation, with eight hours of training each day.⁴⁶ At this training, McDonald's corporation gives each employee specific instructions on how to complete each task associated with being an "area manager" or a "shift manager."⁴⁷ With regard to "slotting" employees, the

³⁷ Second [REDACTED] Aff. ¶¶15, 19; Second [REDACTED] Aff. ¶¶7-8; [REDACTED] Aff. ¶10.

³⁸ Second [REDACTED] Aff. ¶ 11; [REDACTED] Aff. ¶12.

³⁹ Second [REDACTED] Aff. ¶¶10-12.

⁴⁰ Second [REDACTED] Aff. ¶17; Second [REDACTED] Aff. ¶ 8.

⁴¹ Second [REDACTED] Aff. ¶ 23.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ First [REDACTED] Aff. p.2; Second [REDACTED] Aff. ¶25

⁴⁵ Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) ("First [REDACTED] Aff.") at p.2; Second [REDACTED] Aff. ¶24; Third [REDACTED] Aff. ¶10.

⁴⁶ Second [REDACTED] Aff. ¶7; Second [REDACTED] Aff. ¶6.

⁴⁷ Exhibit 7. Although McDonald's training manual distinguishes between "area managers" and "shift managers," the Union has not found evidence suggesting that Employer JKS&K Inc. draws a distinction between these two positions.

training “detailed how to sub-position workers based on experience.”⁴⁸ For example, shift managers are often instructed that the most experienced worker assigned to the front counter should be directed to bag food.⁴⁹ The training also provided instruction in “really basic things like what we were supposed to say to rude customers and how to delegate small tasks we didn’t have time to do ourselves.”⁵⁰ (b) (6), (b) (7)(C) described the training as covering (b) (6), (b) (7)(C), (b) (7)(D)

Shift managers were not instructed on topics such as how to discipline employees, excuse absences, or decide when to send workers home.⁵²

In sum, while shift managers may have job responsibilities that are important to ensuring that Employer’s restaurants operate smoothly, they do not exercise these responsibilities in a manner that affects Employer’s relationship with its employees. They fulfill these responsibilities according to Employer’s detailed rules and policies and consistent with their store manager’s specific instructions. And when a situation arises that could affect the relationship between the Employer and another employee, they either record it for the store manager’s future review, or ask their store manager for instructions on what they should do.

2. (b) (6), (b) (7)(C) Authority As A (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) worked for Employer on and off for about (b) (6), (b) (7)(C) was employed at Employer’s Mid-Rivers store from (b) (6), (b) (7)(C) until (b) (6), (b) (7)(C) was terminated in (b) (6), (b) (7)(C) 2014. (b) (6), (b) (7)(C) started as (b) (6), (b) (7)(C), earning (b) (6), (b) (7)(C), and did not receive a raise when (b) (6), (b) (7)(C) became a (b) (6), (b) (7)(C) in (b) (6), (b) (7)(C).⁵³ (b) (6), (b) (7)(C) worked a variable schedule that was set by (b) (6), (b) (7)(C).⁵⁴

As a (b) (6), (b) (7)(C) responsibilities were almost entirely consistent with those described above. *See supra.* (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) had no role in hiring, firing, suspending, or interviewing employees.⁵⁵ (b) (6), (b) (7)(C) does not recall ever sending an employee home early, and was not supposed to do so without asking (b) (6), (b) (7)(C) store manager about it first.⁵⁶

⁴⁸ Second (b) (6), (b) (7)(C) Aff. ¶6

⁴⁹ Second (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶14.

⁵⁰ *Id.* ¶7.

⁵¹ Second (b) (6), (b) (7)(C) Aff. ¶6.

⁵² *Id.* ¶7.

⁵³ Second (b) (6), (b) (7)(C) Aff. ¶5

⁵⁴ First (b) (6), (b) (7)(C) Aff. at p.1

⁵⁵ Second (b) (6), (b) (7)(C) Aff. ¶5

⁵⁶ *Id.* ¶24.

While (b) (6), (b) (7)(C) generally never recommended discipline for other employees, when (b) (6), (b) (7)(C) would occasionally do so when documenting rule violations. Usually, (b) (6), (b) (7)(C) would only write on the form, (b) (6), (b) (7)(C), (b) (7)(D).⁵⁷ At times, (b) (6), (b) (7)(C) would recommend specific discipline. Regardless of whether (b) (6), (b) (7)(C) made a recommendation, however, (b) (6), (b) (7)(C) would still investigate the severity and type of each write-up to determine what, if any, discipline was appropriate.⁵⁸ A write-up would generally not result in any negative consequences for a worker if (b) (6), (b) (7)(C) liked the worker.⁵⁹ The disciplines occasionally recommended by (b) (6), (b) (7)(C) matched (b) (6), (b) (7)(C) final disciplinary action only about half of the time.⁶⁰ For example, in or around (b) (6), (b) (7)(C) 2014, (b) (6), (b) (7)(C) recommended that employee (b) (6), (b) (7)(C) be suspended for not (b) (6), (b) (7)(C) disregarded (b) (6), (b) (7)(C) recommendation and (b) (6), (b) (7)(C) was not suspended.⁶¹

3. Employer Surveillance of Union Activity

The union began organizing Employer's Mid-Rivers store in or around November 2013. (b) (6), (b) (7)(C) met with employees inside the store as well as in the parking lot. (b) (6), (b) (7)(C) signed a Whatever It Takes (WIT) card pledging (b) (6), (b) (7)(C) support for the union in or around (b) (6), (b) (7)(C) 2013. Shortly after (b) (6), (b) (7)(C) signed up, the union tapered its organizing efforts until it initiated a pre-strike blitz in mid-April. (b) (6), (b) (7)(C) took an active role in the blitz by recruiting (b) (6), (b) (7)(C) co-workers to sign WIT cards in the parking lot. (b) (6), (b) (7)(C) also spoke with (b) (6), (b) (7)(C) whenever (b) (6), (b) (7)(C) would visit the store.⁶²

During the union's pre-strike blitz in (b) (6), (b) (7)(C) began reviewing video footage from the store's security cameras to spy on employee's union activities. On (b) (6), (b) (7)(C) 2014, (b) (6), (b) (7)(C) circulated a picture of (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) and instructed (b) (6), (b) (7)(C) to prevent (b) (6), (b) (7)(C) from coming in the store.⁶³ (b) (6), (b) (7)(C) also instructed (b) (6), (b) (7)(C) to call the police if (b) (6), (b) (7)(C) entered the store.⁶⁴ (b) (6), (b) (7)(C) reiterated the request during a (b) (6), (b) (7)(C) 2014 meeting. Specifically, (b) (6), (b) (7)(C) asked that the store's (b) (6), (b) (7)(C) "let (b) (6), (b) (7)(C) know the time and date we saw them in the store so (b) (6), (b) (7)(C) can check the security video to see if (b) (6), (b) (7)(C) can try to see who the person was and who they were talking to."⁶⁵

⁵⁷ *Id.* ¶¶16-17

⁵⁸ Second (b) (6), (b) (7)(C) Aff. ¶11.

⁵⁹ *Id.* ¶¶11-13.

⁶⁰ *Id.* ¶11

⁶¹ *Id.*

⁶² Interview with (b) (6), (b) (7)(C)

Exhibit 2: (b) (6), (b) (7)(C) Text Conversation, (b) (6), (b) (7)(C) 2014; First (b) (6), (b) (7)(C) Aff., p.4

⁶⁴ First (b) (6), (b) (7)(C) Aff., p.4

⁶⁵ *Id.*, pp.4-5.

Argument

1. (b) (6), (b) (7)(C) Was Not A Supervisor Under Section 2(11)

Employees are statutory supervisors under the Act if: (1) they hold the authority to engage in any 1 of the 12 supervisory functions listed in Section 2(11); (2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment; and (3) their authority is held in the interest of the employer. Supervisory status may be shown if the putative supervisor has the authority either to perform a supervisory function or to effectively recommend the same. *Oakwood Healthcare Inc.*, 348 NLRB 686, 687 (2006) (quoting *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001)).

Although the NLRA appears to define supervisor in broad terms[,] the Board and courts have consistently explained that supervisory authority is not trivial or insignificant: If the term supervisor is construed too broadly, then employees who are deemed to be supervisors will be denied rights that the NLRA was intended to protect. *Vance v. Ball State Univ.*, ___ U.S. ___, 133 S. Ct. 2434, 2446 n.7 (2013). Instead, Congress sought to distinguish between straw bosses, leadmen, set up men, and other minor supervisory employees, and supervisors vested with genuine management prerogatives[.]. *Id.* (quoting S.Rep. No. 105, 80th Cong., 1st Sess., 4 (1947)). An employer has the burden of establishing by a preponderance of the evidence that an individual qualifies as a supervisor. *Kentucky River*, 532 U.S. at 711.

(b) (6), (b) (7)(C) worked as a (b) (6), (b) (7)(C) for Employer. Although (b) (6), (b) (7)(C) completed some administrative tasks, (b) (6), (b) (7)(C) plainly did not have the authority to perform or effectively recommend any of the twelve supervisory functions listed in Section 2(11). To the extent (b) (6), (b) (7)(C) had authority beyond that given to regular crew members, (b) (6), (b) (7)(C) discretion was so limited by (b) (6), (b) (7)(C) store managers' instructions and by Employer's own standards, rules, and regulations, that their exercise of that authority did not require the use of independent judgment. Like other minor supervisory employees, (b) (6), (b) (7)(C) are entitled to the protections of the Act. *See Vance*, 133 S. Ct. at 2446 n.7.

The Region, however, determined that (b) (6), (b) (7)(C) was a supervisor based on its finding that (b) (6), (b) (7)(C) are authorized to independently issue written warnings to employees; can effectively recommend suspensions and discharges; are in charge of stores when a store manager is not present; are expected to attend management meetings; and have access to the store safe. The Region also found that (b) (6), (b) (7)(C) supervisory status was supported by the fact that (b) (6), (b) (7)(C) Each of the Region's conclusions is either contrary to the evidence or insufficient to establish supervisory status. (b) (6), (b) (7)(C) could not perform or effectively recommend any of Section 2(11)'s supervisory functions, and therefore was not a supervisor under the Act.

A. (b) (6), (b) (7)(C) Did Not Discipline Employees.

(b) (6), (b) (7)(C) at Employer's stores could not and did not impose discipline on other employees. The "write ups" completed by some (b) (6), (b) (7) simply documented perceived misconduct, had no disciplinary effect, and were not issued through the exercise of independent judgment. The Region erred in finding that (b) (6), (b) (7)(C) was a statutory supervisor because (b) (6), (b) (7)(C) could "independently issue written warnings to employees." Although (b) (6), (b) (7)(C) was instructed to write up employee misconduct, this documentation did not constitute "discipline" under the Act.

i. (b) (6), (b) (7)(C) Write-ups Did Not Constitute Discipline.

(b) (6), (b) (7)(C) was instructed to complete write-ups that documented employee misconduct. Documenting misconduct and issuing warnings over misconduct are not supervisory functions. While Section 2(11) includes the ability to "discipline other employees" as a supervisory function, there is a long-recognized distinction between the mere ability to "write up" an employee and the ability to "discipline" an employee. *See Jochims v. NLRB*, 480 F.3d 1161 (D.C. Cir. 2007).

An employee's "bare authority" to write up employee infractions cannot, without more, be viewed as creditable evidence of supervisory status. *Id.* at 1170; accord *Phelps Cmt. Med. Ctr.*, 295 N.L.R.B. 486, 490 (1989) ("the issuance of written warnings that do not alone affect job status or tenure do not constitute supervisory authority"). Issuing warnings constitutes supervisory authority to discipline only if the warnings form "the basis of later personnel action without independent investigation or review by other supervisors," rather than merely initiating or being considered in some later disciplinary action. *Jochims*, 480 F.3d at 1170 (quoting *Phelps*). Evidence that upper management exercises significant disciplinary discretion or conducts independent investigations shows that warnings are not discipline. *See Loyalhanna Health Care Associates*, 352 NLRB 863, 868 (2008) (holding write-ups did not constitute discipline because upper management expressly gave considerable weight to other factors).

For example, in *Illinois Veteran's Home*, the putative supervisors could fill out a "Personnel Action," sign it, and show it to the offending employee without obtaining prior authorization from management. 323 NLRB 890 at 890 (1997). However, the Board deemed the write-ups to be "merely reportorial and not indicative of supervisory status" because upper management relied on factors other than the information provided on the warning form when deciding whether to take further action. *Id.* at 891.

The Board came to a similar conclusion in *Ken-Crest Services*, where it found that putative supervisors' warnings lacked "tangible effects on job status" because they did not

“necessarily lead to job consequences.” 335 NLRB 777, 778 (2001). Despite the fact that the employer maintained a progressive disciplinary policy, there was “no automatic progression” from a warning to more severe disciplinary actions. *Id.* In particular, an employee could receive multiple warnings from the putative supervisor without it escalating to suspension or more serious discipline. *Id.*; accord *Lucky Cab Co.*, 360 NLRB No. 43 slip op. at 13 (2014) (finding write-ups did not affect job status where there was “no evidence that discipline emanated directly from the [putative supervisors’] write-ups”).

In this case, write-ups completed by (b) (6), (b) (7)(C) simply documented employee infractions. They did not constitute discipline because they did not automatically affect the terms and conditions of a crew member’s employment. Instead, even when a write-up documented egregious misconduct, it did not result in a disciplinary response until and unless the store manager independently decided to take action.⁶⁶

ii. (b) (6), (b) (7)(C) Did Not Exercise Independent Judgment When Documenting Employee Misconduct.

Even if (b) (6), (b) (7)(C) write-ups constituted discipline, (b) (6), (b) (7)(C) did not exercise independent judgment in issuing write-ups. A putative supervisor lacks independent judgment in imposing discipline if they do not have “discretion to decide which incidents to record[.]”. *Shaw Inc.*, 350 NLRB 354, 357 (2007). Here, (b) (6), (b) (7)(C) did not exercise discretion in filling out write-ups.

The format of the write-up confines (b) (6), (b) (7)(C) to documenting misconduct that falls within several predetermined categories. Moreover, (b) (6), (b) (7)(C) mandated that some (b) (6), (b) (7)(C) write-up crew members for absences and cash register shortages that exceeded \$5 regardless of the circumstances.⁶⁷ Therefore, contrary to the Region’s findings (b) (6), (b) (7)(C) was not a supervisor because of any purported ability to issue discipline.

B. (b) (6), (b) (7)(C) Could Not Effectively Recommend Discipline.

The Region erred in finding that (b) (6), (b) (7)(C) could “effectively recommend suspensions and discharges.” This finding is contrary to the evidence. Employer’s (b) (6), (b) (7)(C) could not effectively recommend discipline, suspensions, or discharges.

The ability to “effectively recommend” discipline is a supervisory function under Section 2(11). The authority to “effectively recommend” an action “generally means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed.” *Children’s Farm Home*, 324 NLRB 61, 61 (1997).

⁶⁶ Second (b) (6), (b) (7)(C) Aff. ¶13; Second (b) (6), (b) (7)(C), (b) Aff. ¶10; Third (b) (6), (b) (7)(C), (b) (7)(C) Aff. ¶6; (b) (6), (b) (7)(C) Aff. ¶12.

⁶⁷ Second (b) (6), (b) (7)(C), (b) Aff. ¶9.

Putative supervisors cannot effectively recommend discipline if upper management gives considerable weight to factors other than their recommendation when deciding whether to discipline an employee. *Loyalhanna Health Care Associates*, 352 NLRB at 868; *Avante at Wilson, Inc.*, 348 NLRB 1056, 1058 (2006).

For example, in *Ryder Truck Rental*, the Board found that alleged supervisors lacked the authority to recommend discipline because they were not included in the later steps of the disciplinary process where the actual decision about whether to discipline an employee was made. *Ryder Truck Rental*, 326 NLRB 1386 (1998). The putative supervisor would describe the situation to upper management who would “research it from there, and make a decision as to if something further ahead needs to be done.” *Id.* Because the putative supervisor’s involvement ceased once they communicated the violation to upper management, the Board found they could neither discipline nor effectively recommend discipline. *Id.*

Here, there is absolutely no evidence that (b) (6), (b) (7)(C) had the authority to effectively recommend discipline, discharge, or suspension. There is no space on the write-up form for (b) (6), (b) (7)(C) to provide a recommendation. While (b) (6), (b) (7)(C) would sometimes express (b) (6), (b) (7)(C) desire that a write-up result in suspension, these recommendations were not made at (b) (6), (b) (7)(C) request, and (b) (6), (b) (7)(C) was just as likely to ignore (b) (6), (b) (7)(C) comment as (b) (6), (b) (7)(C) was to impose discipline as (b) (6), (b) (7)(C) suggested.⁶⁸ As with all (b) (6), (b) (7)(C) would independently assess and occasionally investigate alleged misconduct before taking further action. When (b) (6), (b) (7)(C) decided whether a write-up would result in a suspension, the decision was made based on (b) (6), (b) (7)(C) opinion of the misconduct’s severity and personal opinion of the crew member.

Like the employees in *Ryder Truck*, (b) (6), (b) (7)(C) was not involved in the final disciplinary decision. There is no evidence that any recommendation (b) (6), (b) (7)(C) could have offered would have influenced the outcome of the disciplinary process. Therefore, (b) (6), (b) (7)(C) could not effectively recommend discipline.

C. (b) (6), (b) (7)(C) Was Not a Supervisor Merely Because Store and Assistant Managers Were Not Always Present

The Region found that (b) (6), (b) (7)(C) was a statutory supervisor because (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C), (b) (7)(D). However, it is well established that “an employee’s service as the highest ranking employee on duty is secondary indicum of supervisory status that by itself is insufficient to demonstrate supervisory status.” *Loyalhanna Health Care Associates*, 352 NLRB at 864; *Golden Crest*, 348 NLRB 727, 730 (2006); *St. Francis Medical Center*, 323 NLRB 1046, 1047 (1997). Moreover, in *Loyalhanna* the Board found that even if

⁶⁸ Second (b) (6), (b) (7)(C) Aff. ¶11.

being the highest ranking employee were sufficient to establish supervisory status, a low-level supervisor is not the highest ranking employee on duty if upper management was on call at all times.

Although (b) (6), (b) (7)(C) at times worked without the store manager being present, there were generally multiple (b) (6), (b) (7)(C) working during such a shift, and they did not have any more authority than they did when the store manager was present. For example, (b) (6), (b) (7)(C) was expected to check in with (b) (6) store manager when employees “called out” to determine whether and how the vacant position should be staffed.⁶⁹

In short, (b) (6), (b) (7)(C) was rarely the highest ranking employee in the store, and when (b) (6), (b) (7)(C) was, store managers were always available and supposed to be called whenever an unusual situation arose. Simply being the highest ranking employee on duty at a given time is insufficient to establish supervisory status. Because (b) (6), (b) (7)(C) did not use independent judgment to exercise any supervisory functions when (b) (6), (b) (7)(C) was the highest ranking employee present, and upper management was always on call, the Region erred in finding that this fact indicated that (b) (6), (b) (7)(C) was a supervisor.

D. (b) (6), (b) (7)(C) Did Not Have the Authority to Assign Employees.

In *Oakwood Healthcare*, the Board stated that “assigning” employees for purposes of Section 2(11) refers to the “act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks to an employee.” 348 NLRB at 689. On the other hand, “choosing the order in which the employee will perform discrete tasks within those assignments,” or giving “ad hoc instruction that the employee perform a discrete task,” does not amount to “assigning.” *Id.* at 689. “[T]he authority to assign must be exercised using independent judgment, and judgment is not considered independent if it is dictated or controlled by detailed instructions.” *Brusco Tug & Barge, Inc.*, 359 NLRB No. 43, slip op. at 6 (Dec. 14, 2012) (citing *Oakwood Healthcare*, 348 NLRB at 392-93). “Moreover, the assignment authority must rise above the level of ‘routine or clerical’ in order to constitute independent judgment.” *Id.*

(b) (6), (b) (7)(C) did not “assign” workers. (b) (6), (b) (7)(C) did not appoint crew members to their positions, (b) (6), (b) (7)(C) did not schedule employees, and (b) (6), (b) (7)(C) could not designate their duties. Store managers have exclusive authority over these functions. Before every shift, store managers had already designated which position each employee will work during that shift. Employees had already been trained as to what work they would perform; for example, front counter cashiers are generally not trained to prepare food, and therefore do not work the grill. Because (b) (6), (b) (7)(C) did not

⁶⁹ *Id.* ¶25

designate an employee to a place, appoint an employee to a time, or give significant overall duties to an employee, (b) (6), (b) (7)(C) did have the authority to “assign” workers as defined by Section 2(11).

Even if (b) (6), (b) (7)(C) could assign work, (b) (6), (b) (7)(C) does not exercise the independent judgment that is necessary to show supervisory authority. *See Croft Metals*, 348 NLRB at 721; *Shaw, Inc.*, 350 NLRB 354, 355-56 (2007). In *Shaw, Inc.*, the Board found that a foreman did not exercise independent judgment where assignments were “often based on an employee’s trade or known skills, and [were], thus, essentially self-evident.” 350 NLRB at 355-56. The Board noted that “if an operator is part of a crew, he [would] operate the heavy equipment, a fuser [would] fuse plastic pipe, and a welder [would] handle metal pipe.” To the extent that (b) (6), (b) (7)(C) designates particular functions, these designations are also “essentially self-evident,” because they are based on the employee’s job classification. For example, because cashiers were not trained to prepare food, (b) (6), (b) (7)(C) would not exercise independent judgment if (b) (6), (b) (7)(C) selected a prep cook to help make sandwiches instead of an available cashier. As in *Shaw*, (b) (6), (b) (7)(C) did not exercise independent judgment to the extent (b) (6), (b) (7)(C) engaged in “assignment.”

Employer may argue that (b) (6), (b) (7)(C) obligation to “slot” workers, or (b) (6), (b) (7)(C) occasional requests that employees complete certain tasks at a certain time, constitutes supervisory authority. These tasks, however, do not constitute “assignment” and do not require the use of independent judgment.

At the beginning of each shift, (b) (6), (b) (7)(C) “slot” workers within their areas of assignment. When a (b) (6), (b) (7)(C) sub-positions a worker, they simply inform the worker which tasks within their assigned position they will be primarily responsible for performing. For example, (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) would instruct two workers assigned to drive-thru whether they were working the first or second window.⁷⁰ When assigning these two tasks, (b) (6), (b) (7)(C) was not “designating an employee to a place,” as the workers were already assigned to drive thru by the store manager. Nor was (b) (6), (b) (7)(C) “giving significant overall duties” to the workers, as the workers’ duties were established when they were trained for drive-thru, and assigned to that position by the store manager.

Moreover, (b) (6), (b) (7)(C) did not exercise independent judgment when slotting workers because (b) (6), (b) (7)(C) decisions are “dictated or controlled by detailed instructions.” Despite the largely routine nature of (b) (6), (b) (7)(C) responsibilities, they must undergo three days of intensive training from corporate McDonald’s on how, exactly, their minimal responsibilities are to be executed. In these trainings, (b) (6), (b) (7)(C) are given detailed instructions on how to slot workers within their

⁷⁰ Second (b) (6), (b) (7)(C) Aff. ¶6.

areas of assignment.⁷¹ (b) (6), (b) (7)(C) would select workers for a sub-position based on experience pursuant to this training.⁷² Even if this act constituted an assignment, it was clearly controlled by Employer's detailed instructions.

Similarly, to the extent that (b) (6), (b) (7)(C) occasionally instructed an employee to complete a specific task, that act did not constitute supervisory assignment. For example, although a (b) (6), (b) (7)(C) might instruct an employee to clean a particular area, the responsibility to clean that area is required of all employees assigned to that position by the store manager. A (b) (6), (b) (7)(C) instruction that an employee complete this task at a particular time is the type of "ad hoc instruction that an employee perform a discrete task" that does not amount to assigning. See *Oakwood Healthcare*, 348 NLRB at 689. Therefore, (b) (6), (b) (7)(C) did not "assign" workers under Section 2(11).

E. (b) (6), (b) (7)(C) Does Not Have the Authority to Responsibly Direct Employees.

(b) (6), (b) (7)(C) at Employer's stores, including (b) (6), (b) (7)(C) do not have the authority to responsibly direct employees under Section 2(11). In *Oakwood Healthcare*, the Board stated that an individual has the supervisory authority "responsibly to direct" employees when that individual decides "what job shall be undertaken next or who shall do it," . . . provided that the direction is both 'responsible' . . . and carried out with independent judgment." 348 NLRB at 691.

In *Shaw*, the Board found that various foremen did not have authority to direct where there was "no showing that such work require[d] more than minimal guidance." 350 NLRB at 356. Similarly, in this case, crew members know what tasks need to be done and perform them without prompting from (b) (6), (b) (7)(C). Virtually all tasks are generated by customer orders and each crew member is able to execute their role in filling an order without direction. Cleaning tasks are also performed with little interference from shift managers. For instance, at the Mid-Rivers store, cleaning would only be performed when (b) (6), (b) (7)(C) left a list.⁷³

Furthermore, (b) (6), (b) (7)(C) was always subject to regular monitoring by higher management. In *Shaw*, the Board found that the foremen were not supervisors where management generally visited every foreman's jobsite at least once a day, "checking on progress and providing guidance as needed." 350 NLRB at 356. The Board reasoned that the foremen served only as a "conduit for carrying out [employer's] assignments," since there was regular monitoring by management to ensure proper performance. *Id.* The Board noted that foremen had the means to contact and communicate with supervisors when they were not on site, and problems or

⁷¹ Second (b) (6), (b) (7)(C) Aff. ¶6; Second (b) (6), (b) (7)(C), (b) (7)(C) Aff. ¶¶13-14.

⁷² Second (b) (6), (b) (7)(C) Aff. ¶6; Second (b) (6), (b) (7)(C), (b) (7)(C) Aff. ¶¶13-14.

⁷³ Second (b) (6), (b) (7)(C) Aff. ¶26.

questions about unexpected developments were directed to supervisors for them to handle. *Id.* at 355 n.8.

Similar to the upper management in *Shaw*, Employer's store managers constantly monitored the store and provided guidance as needed. If (b) (6), (b) (7)(C) had a question about where to direct employees, (b) (6), (b) (7)(C) would call or text to ask (b) (6), (b) (7)(C) store manager.⁷⁴ Even if (b) (6), (b) (7)(C) had the authority to direct, (b) (6), (b) (7)(C) lacked the authority to do so responsibly. Direction is "responsible" only if "the person directing and performing the oversight of the employee" is "accountable for the performance of the tasks by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly." *Oakwood Healthcare*, 348 NLRB at 691-92.

To show that direction is "responsible," one "must present evidence of actual accountability." *Alstyle Apparel*, 351 NLRB 1287. The level of accountability necessary to show that direction is "responsible" is not established unless it is "shown that the employer delegated to the putative supervisor the authority . . . to take corrective action if necessary." *Oakwood Healthcare*, 348 NLRB at 692. The purpose of this "accountability" requirement is to create a clear distinction between employees directing employees in the interests of management and those whose interest in directing other employees "is simply the completion of a certain task" (and thus are not acting as supervisors). *Id.* Therefore, to meet the accountability standard, the putative supervisor "will have, if and to the extent necessary, an adversarial relationship with those he is directing." *Id.*

(b) (6), (b) (7)(C) did not meet the "accountability" standard required to find responsible direction. (b) (6), (b) (7)(C) could not take any corrective action for employee infractions, such as sending an employee home, docking an employee's pay, suspending, or firing an employee. To the contrary, even when an employee repeatedly refused to adhere to their very limited direction, (b) (6), (b) (7)(C) only demonstrated recourse was to give a verbal warning, make a factual report of what occurred in a write-up, and wait for (b) (6), (b) (7)(C) action.

Finally, (b) (6), (b) (7)(C) did not exercise independent judgment as required by Section 2(11). The Board requires that an employee be "free of the control of others and form[ed] an opinion or evaluation by discerning and comparing data." *Oakwood Healthcare*, 348 NLRB at 693. Any limited direction of employees was both under the supervision of (b) (6), (b) (7)(C) and made pursuant to corporate McDonald's detailed standards and training. (b) (6), (b) (7)(C) would call (b) (6), (b) (7)(C) whenever a problem arose.⁷⁵ Accordingly, (b) (6), (b) (7)(C) was not given the leeway to act in a way requiring independent judgment. *See Cmty. Educ. Centers, Inc. & Dist. 1199j, Nuhhce, Afl-Cio*, 360 NLRB No. 17 (Jan. 9, 2014) (shift supervisors did not exercise independent judgment in

⁷⁴ Second (b) (6), (b) (7)(C) Aff. ¶25.

⁷⁵ Second (b) (6), (b) (7)(C) Aff. ¶25.

directing employees when the Employer failed show that tasks were not controlled by the Employer's own policies and procedures or involve[d] a degree of discretion rising above the merely routine). Therefore, (b) (6), (b) (7)(C) did not have authority to responsibly direct employees.

F. The Region's Remaining Findings are Insufficient to Show Supervisory Status.

Finally, the Region cited (b) (6), (b) (7)(C) attendance at Employer's management meetings, access to the safe, and ability to deposit money as evidence of their supervisory status. (b) (6), (b) (7)(C) attendance at manager meetings is only secondary indicia of supervisory status and is insufficient to establish an employee is a supervisor under the Act. *See Sheraton Universal Hotel*, 350 NLRB 1114, 1130 (2007); *Central Plumbing Specialties*, 337 NLRB 973 (2002). And the abilities to deposit cash and access the safe are not even secondary indicia, and have no bearing on supervisory status. *See Washington Post Company*, 254 NLRB 168, 195 (1981) (not mentioning a cashier assistant's daily bank deposits as evidence of his supervisory status despite mentioning it as one of his daily duties).

(b) (6), (b) (7)(C) could not and did not discipline employees, effectively recommend discipline, assign employees, or responsibly direct employees. Nor did (b) (6), (b) (7)(C) engage in or effectively recommend any of Section 2(11)'s other supervisory functions. The Region's conclusion to the contrary should be reversed.

2. **Employer's Review and Dissemination of Security Camera Footage Violated Section 8(a)(1) of the Act**

A. Employer Created An Impression of Surveillance When (b) (6), (b) (7)(C) Showed (b) (6), (b) (7)(C) a Picture of (b) (6), (b) (7)(C) and Instructed (b) (6), (b) (7)(C) to Report When (b) (6), (b) (7)(C) were in the Store

The Board has held that an employer creates an impression of surveillance when it conspicuously photographs protected activity or shows employees a photograph of union activity. *Rainbow Garment Contracting Inc.*, 314 NLRB 929 (1994); *Seton Company*, 332 NLRB 979, 981 (2000). In *Seton Company*, the Board found the employer created an impression of surveillance by including a still frame of union headquarters in its pro-company video. Employees could justifiably assume that their union activities were under surveillance because the employer had videotaped the union headquarters. *Seton Company*, 332 NLRB at 981. Further, enlisting employees to inform on union activity would reasonably lead an employee to believe their union activity is being watched by management. *See Stevens Creek Chrysler Jeep Dodge*, 353 NLRB 1294, 1295 (2009) (holding owners created an unlawful impression of surveillance in violation of Section 8(a)(1) by asking employees about the identity of union organizers); *Aloha Temporary Service Inc.*, 318 NLRB 972, 975 (1995).

Here, (b) (6), (b) (7)(C) showed (b) (6), (b) (7)(C) a photograph of (b) (6), (b) (7)(C) and requested that (b) (6), (b) (7)(C) let (b) (6), (b) (7)(C) know the when (b) (6), (b) (7)(C) were in the store so “(b) (6), (b) (7)(C) can check the security video to see if (b) (6), (b) (7)(C) can try to see who the person was and who they were talking to.”⁷⁶ Like the employees shown photographs of the union’s headquarters in *Seton Company*, (b) (6), (b) (7)(C) would reasonably deduce that (b) (6), (b) (7)(C) union activity was under surveillance since (b) (6), (b) (7)(C) was making a pictorial record of organizing efforts in the store. (b) (6), (b) (7)(C) request that (b) (6), (b) (7)(C) help (b) (6), (b) (7)(C) determine which co-workers had signed cards strengthened (b) (6), (b) (7)(C) belief that (b) (6), (b) (7)(C) union activity was being spied on.

B. Employer’s Review of Security Footage and Surreptitious Photographs of Union Activity Constitute Surveillance

An employer violates the Act if it engages in “out of the ordinary” conduct to uncover or scrutinize union activity. *Loudon Steel*, 340 NLRB 307, 313 (2003); *Sprain Brook Manor*, 351 NLRB 1190, 1191 (2007); *Fairfax Hospital, A Division of Inova Health Systems and Fairfax Health System, Inc.*, 310 NLRB 299, 301 (1993). The Board has long recognized employer photographing and videotaping as the kind of unusual observation that constitutes surveillance. *See National Steel and Shipbuilding Company*, 324 NLRB 499, 531 (1997) enfd. by *National Steel and Shipbuilding Co. v. NLRB*, 156 F.3d 1268, 1272 (D.C. Cir. 1998); *Reno Hilton*, 319 NLRB 1154, 1192 (1996). In *National Steel*, the Board held that Employer’s use of a conspicuous security camera at an entrance where the union regularly held rallies “clearly constitute[d] more than ‘mere observation’ because such pictorial recordkeeping” had a coercive effect.

While photographing protected activity is not a per se violation of the Act, pictorial recordkeeping can have a coercive effect in spite of evidence that employees are not aware of or fazed by Employer recording them. *Id.*; *Reno Hilton*, 319 NLRB at 1192. For example in *Reno Hilton*, the director of security “secretly” photographed a union representative and tracked his movements via surveillance camera while he was a paying guest at the employer’s hotel. *Id.* The security director’s testimony revealed that he carried out the surveillance without assistance. *Reno Hilton*, 319 NLRB at 1192. Even though the security director’s photographing and videotaping were unknown to employees, the Board upheld the ALJ’s determination that the employer’s surveillance of the union representative tended to “interfere with, restrain, and coerce employees in the exercise of their rights guaranteed by Section 7 of the Act.” *Id.* The Board has similarly found surveillance where employees are unbothered by the employer photographing and videotaping union activity. In *National Steel* the Board found Employer’s installation and use of security camera was coercive even though “employees at the rallies appeared to be

⁷⁶ First (b) (6), (b) (7)(C) Aff., p.4

unfazed by the camera. In sum, an employer can engage in unlawful surveillance even if employees are unaware or unbothered by union activity being recorded.

Even if (b) (6), (b) (7)(C) is a supervisor under the Act, (b) (6), (b) (7)(C) surveillance still constitutes a Section 8(a)(1) violation. As in *Reno Hilton*, that employees were unaware of Employer's pictorial recordkeeping does not remedy the coercive effect of the surveillance. (b) (6), (b) (7)(C) expressly reviewed security camera footage to identify the employees that spoke with union representatives and to spy on (b) (6), (b) (7)(C). The sole purpose of (b) (6), (b) (7)(C) photographic monitoring of (b) (6), (b) (7)(C) was to interfere with employees' Section 7 rights to speak with a union official. Because Employer spied on (b) (6), (b) (7)(C) and its employees with the intention of frustrating protected activity, its conduct tends to interfere with employee rights and violates the Act. It is also worth noting that while an employer can photograph union activity in anticipation of misconduct, they must have a reasonable basis to do so. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) reason for the surveillance was not to document trespass or misconduct but rather to identify which employees supported the union. Therefore, Employer was not justified in its pictorial recordkeeping.

Conclusion

For the reasons stated here, and based on such other considerations as the General Counsel may find applicable, the Union respectfully asks that the decision of Region 10 to dismiss the charge be reversed, the charge be remanded, and that complaint be issued in the absence of appropriate settlement.

This the 22nd day of July, 2015.

/s/ Paul E. Smith

Paul E. Smith

N.C. Bar No. 45014

Narendra K. Ghosh

N.C. Bar. No. 37649

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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

July 23, 2015

PAUL SMITH, ESQ.
SOUTHERN WORKERS ORGANIZING
COMMITTEE
100 EUROPA DR STE 250
CHAPEL HILL, NC 27517

Re: James Booth-JKS & K, Inc. d/b/a
McDonald's Corp., as Joint and Single
Employers
Case 10-CA-139670

Dear Mr. Smith:

We have received your appeal and accompanying material. We will assign it for processing in accordance with Agency procedures, which include review of the investigatory file and your appeal in light of current Board law. We will notify you and all other involved parties as soon as possible of our decision.

Sincerely,

Richard F. Griffin, Jr.
General Counsel

By:

A handwritten signature in dark ink that reads "Deborah M.P. Yaffe". The signature is written in a cursive, flowing style.

Deborah M.P. Yaffe, Director
Office of Appeals

cc: CLAUDE T. HARRELL JR.
REGIONAL DIRECTOR
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(b) (6), (b) (7)

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CORP., AS JOINT AND SINGLE
EMPLOYERS
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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

September 3, 2015

MATTHEW KORN, ESQ.
FISHER & PHILLIPS LLP
1320 MAIN ST, STE 700
POST OFFICE BOX 11612
COLUMBIA, SC 29211

Re: James Booth-JKS & K, Inc. d/b/a
McDonald's Corp., as Joint and Single
Employers
Case 10-CA-139670

Dear Mr. Korn:

In response to your request, please be advised that you are granted to September 9, 2015 to submit your position in response to the appeal in the above-captioned matter.

You can file your position statement electronically through the Agency's e-filing system on the website www.nlrb.gov.

- 1) Click on E-File documents;
- 2) Enter your NLRB Case Number; and,
- 3) Follow the detailed instructions.

The Regional Director should also receive a copy of your submission.

Sincerely,

Richard F. Griffin, Jr.
General Counsel

A handwritten signature in black ink that reads "Mark E. Arbesfeld". The signature is written in a cursive, slightly slanted style.

By:

Mark E. Arbesfeld, Acting Director
Office of Appeals

James Booth-JKS & K, Inc. d/b/a
McDonald's Corp., as Joint and Single
Employers
Case 10-CA-139670

-2

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kf

Case Name: James Booth-JKS & K, Inc.d/b/a McDonald's Corp., as Joint and Single Employers
Case No.: 10-CA-139670
Agent: Jeffrey D. Williams, Field Attorney

CASEHANDLING LOG

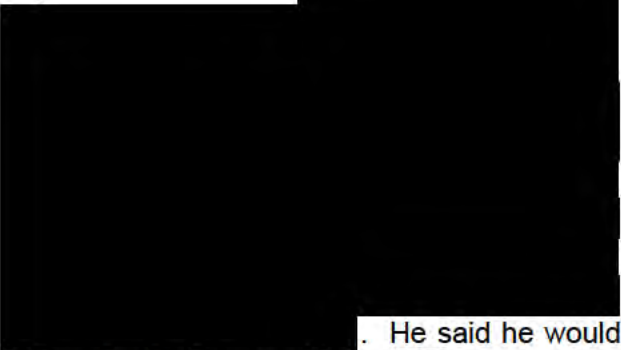
Date	Person Contacted	Method of Contact	Description of Contact or Activity
11/4/14	U atty Lauren Bonds	email	Evidence request
11/4/14	U atty Lauren Bonds	email	Bonds said that I (b) (5), (b) (6), (b) (7)(C) and I can contact Er for response.
11/5/14	Corporate and franchisee counsel	Emailed letter	Request for evidence letter
11/18/14	Store atty Korn	email	Notification that he is still speaking with witnesses and will submit Er evidence by 11/28/14
11/26-11/30			On vacation
12/12-12/17/14			In Birmingham for trial.
12/22 – 1/5/			On vacation
1/20/15			Submitted initial FIR
1/23/15			Discussed getting supplemental affidavit from (b) (5), (b) (6), (b) (7)(C) on issue of (b) (5), (b) (6), (b) (7)(C)
1/28 – 2/10/15			On sick leave
(b) (5), (b) (6) /15	(b) (6), (b) (7)(C)		(b) (5), (b) (6), (b) (7)(C)
2/18/15	(b) (6), (b) (7)(C) and U atty Gnosh	Emailed letter	Emailed draft telephone affidavit to (b) (6), (b) (7)(C) and U attorney Gnosh with return date of 2/20/15.

Date	Person Contacted	Method of Contact	Description of Contact or Activity
2/19/15	U atty Lauren Bonds	phone	Said that she (b) (5), (b) (6), (b) (7)(C) [REDACTED] Said she would submit a position statement (b) (5), (b) (6), (b) (7)(C) [REDACTED]. Told her that would be fine. Told her that I still need (b) (6) to return (b) (6) affidavit to me by tomorrow. Bonds said that (b) (5), (b) (6), (b) (7)(C) [REDACTED] will be faxing the affidavit.
2/23/15	(b) (6), (b) (7)(C)	phone	Says (b) (6), (b) (7)(C) [REDACTED] just noticed last night that (b) (6), (b) (7)(C) [REDACTED] had affidavit in (b) (6) email. Says (b) (6), (b) (7)(C) [REDACTED] email comes to (b) (6), (b) (7)(C) [REDACTED] phone and (b) (6), (b) (7)(C) [REDACTED] will have to find a computer to print it out. Says (b) (6), (b) (7)(C) [REDACTED] will not be able to get affidavit back to me until Wednesday. Says (b) (6), (b) (7)(C) [REDACTED] will fax it.
2/26/15	(b) (6), (b) (7)(C)	phone	Said that (b) (6), (b) (7)(C) [REDACTED] Said that (b) (6), (b) (7)(C) [REDACTED] will get affidavit to me or will have (b) (6) do so. Said (b) (6), (b) (7)(C) [REDACTED] thing and (b) (6), (b) (7)(C) [REDACTED] and will fax it back to me tomorrow.
2/27/15	U atty Lauren Bonds	phone	Notified her of my difficulty in getting (b) (6) to return (b) (6) affidavit. Said that she will try to contact (b) (6) and see if she can get (b) (6) to return it. Reminded her that the affidavit was due back a week ago and I will have to process the case without it if (b) (6), (b) (7)(C) [REDACTED] does not return it by Monday I will process the case without it.
3/2/15	U atty Lauren Bonds	phone	Notified her that (b) (6) still had not returned the affidavit and that I would have to proceed without it. Said she understood and that (b) (6), (b) (7)(C) [REDACTED] had not returned (b) (6), (b) (7)(C) [REDACTED] calls either.
			Case in abeyance through June 2014.
7/2/15	U atty Lauren Bonds	phone	Left message to call me re Region's decision in

Date	Person Contacted	Method of Contact	Description of Contact or Activity
	Bonds		this case
7/6/15	U atty Lauren Bonds	phone	(b) (5), (b) (6), (b) (7)(C) Said that she will get back to me ASAP (b) (5), (b) (6), (b) (7)(C) [REDACTED]
7/7/15	U atty Lauren Bonds		U wants long form dismissal

Case Name: McDonalds
Case No.: 10-CA-139670
Agent: Matthew J. Turner, Field Attorney

CASEHANDLING LOG

Date	Person Contacted	Method of Contact	Description of Contact or Activity
2/3/15	SFA Henderson	In person	SFA Henderson asked me to assist with investigation while BA Williams is out of the office.
2/3/15	Narendra Ghosh	Phone 919-942-5200	I spoke to him about (b) (5), (b) (6), (b) (7)(C)  . He said he would call me back after speaking to (b) (6), (b) (7)(C)
2/4/15	Narendra Ghosh	Phone 919-942-5200	He spoke with (b) (6), (b) (7)(C) and he gave permission for me to contact (b) (6), (b) (7)(C) directly. He confirmed (b) (6), (b) (7)(C) phone number is the same as (b) (5), (b) (6), (b) (7)(C)
2/4/15	(b) (6), (b) (7)(C)	Phone (b) (6), (b) (7)(C)	I left vm.
2/6/15	(b) (6), (b) (7)(C)	Phone (b) (6), (b) (7)(C)	I left vm.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

October 6, 2015

PAUL SMITH, ESQ.
SOUTHERN WORKERS ORGANIZING
COMMITTEE
100 EUROPA DR STE 420
CHAPEL HILL, NC 27517

Re: James Booth-JKS & K, Inc.d/b/a
McDonald's Corp., as Joint and Single
Employers
Case 10-CA-139670

Dear Mr. Smith:

We have carefully considered your appeal from the Regional Director's refusal to issue complaint. We agree with the Regional Director's decision and deny the appeal substantially for the reasons in his July 7, 2015 letter.

Contrary to the assertions in your appeal, the weight of the evidence supports that the (b) (6), (b) (7)(C) here was a supervisor under Section 2(11) of the Act. It appears (b) (6), (b) (7)(C) effectively recommended discipline, and possessed the authority to write-up employees. Further, it is noted that (b) (6), (b) (7)(C) did not sign and return one of the affidavits --- the affidavit most recently taken by the Region -- related to the instant charge. Accordingly, further proceedings are unwarranted.

Sincerely,

Richard F. Griffin, Jr.
General Counsel

A handwritten signature in dark ink, reading "Deborah M.P. Yaffe". The signature is written in a cursive, flowing style.

By:

Deborah M.P. Yaffe, Director
Office of Appeals